

Monday, February 2, 2009

Division Five

**A121834 – In re M.H., a Person Coming Under the Juvenile Court Law.
Sonoma County Human Services Department, v. T.H.**

The order denying mother's section 388 petition and terminating her parental rights is affirmed. Jones, P.J., We Concur: Needham, J., Stevens, J.¹ (Not for Publication.)

**A123753 – James Haramis, v. The Superior Court of San Francisco County,
Pacific Wu Restaurant Partners, L.P., R.P.I.**

By The Court: Petitioner James Haramis (Haramis) is the defendant and appellant to a pending appeal in this court (Case Number A123117). A dispute has arisen concerning the "record of the written documents from the superior court proceedings. . . ." (See Cal. Rules of Court, rule 8.120(a).)² This decision shall be final as to this court within five (5) court days. (Rule 8.490(b)(3).)³ Simons, Acting P.J., Needham, J., Stevens, J.⁴ (Not for Publication.)

Tuesday, February 3, 2009

Division One

¹ Retired Associate Justice of the Court of Appeal, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

² All further rule references are to the California Rules of Court.

³ The Clerk shall file a copy of this opinion in the related appeal in Case Number A123117.

⁴ Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

A120297 – The People, v. Andrea Elizabeth Schiefer.

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Flinn, J.⁵
(Not for Publication.)

Division Two

A119303 – The People, v. Timothy Hudson Roberts.

The judgment of conviction is affirmed. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Tuesday, February 3, 2009(Continued)

Division Five

A116370 – Stancy Nesby, v. City of Berkeley et al.

The judgment is affirmed, with costs to defendants. Dondero, J., We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

Wednesday, February 4, 2009

Division One

A120532 – Robert Eder et al., v. California Department of Fish and Game et al.

By The Court: It is ordered that the opinion filed herein on January 16, 2009, be modified as follows: (See Order). There is no change in the judgment. Marchiano, P.J. (Certified for Publication.)

Division Four

A118978 – The People, v. Ali Foroutan.

The judgment – including the sentence – is affirmed. Reardon, Acting P.J., I Concur: Sepulveda, J. (See concurring opinion by J. Rivera.) (Not for Publication.)

⁵ Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, February 5, 2009

Division Two

A119241 – The People, v. Demetrie L. Simmons.

A120609 – In re Demetrie L. Simmons, on Habeas Corpus.

The matter is remanded to the trial court with directions to strike the section 667.5, subdivision (b) enhancement allegation appended to case No. SCR489359; prepare a corrected abstract of judgment; and forward copies of such abstract of judgment to the appropriate correctional authorities. The judgment is otherwise affirmed. The petition for writ of habeas corpus is denied. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A118358 – The People, v. Roy Hinkle Johns.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Thursday, February 5, 2009(Continued)

A121132 – Peter Patras v. Alexander Anolik et al.

Appellants have not and cannot defeat the showing Patras has made of a probability he will prevail on his malicious prosecution claim. The ruling denying appellant's special motion to strike the complaint is affirmed. The judgment is affirmed. Patras shall be awarded his costs on appeal. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A120821 – In re R.L., a Person Coming Under the Juvenile Court Law. The People, v. R.L.

The case is remanded to allow the juvenile court to consider whether punishment for both offenses is barred by section 654, and to declare whether each of R.L.'s offenses is a misdemeanor or a felony, as required by Welfare and Institutions Code section 702 and the California Rules of Court. The court shall recalculate the maximum period of confinement as necessary in accordance with its determinations. The court's orders are otherwise affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Certified for Partial Publication.)

A119265 – Access Recovery Group, Inc., v. Kimberly Pinnick.

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J.
(Not for Publication.)

Division Five

A118858 – In re J.P., a Person Coming Under the Juvenile Court Law. The People, v. J.P.

By The Court: On the court's own motion, the written opinion in the above-entitled cause, filed on January 7, 2009, has now been certified for publication pursuant to California Rules of Court, rule 8.1105(b), and it is ordered that said opinion be published in the official reports. Simons, J. Acting P.J. (Certified for Publication.)

A120184 – The People, v. Kyle Brandon Adams.

The judgment is affirmed. Needham, J., We Concur: Simons, acting P.J., Stevens, J.⁶ (Not for Publication.)

Friday, January 6, 2009

Division Four

A122136 – In re S.E., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department, v. B.S.

The orders denying mother's section 388 petition and terminating her parental rights are affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A123073 – M.C., v. The Superior Court of San Francisco County, San Francisco Department of Human Services, R.P.I.

By The Court: The opinion filed herein on January 15, 2009, is ordered modified as follows: On page 7, part III., the cite to "(Cal. Rules of Court, rule 8.264(b)(3).)" is deleted. There is no change in the judgment. Reardon, Acting P.J. (Not for Publication.)

⁶ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

A119679 – Stephen J. Kennedy, v. Healthone Staffing, LLC.

The trial court's judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. Costs on appeal are awarded to appellant. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A120430 – The People, v. The Superior Court of Contra Costa County, Michael Nevail Pearson, R.P.I.

The order to show cause is discharged, and the petition for writ of mandate is denied. Simons, Acting P.J., We Concur: Needham, J., Dondero, J.⁷ (Not for Publication.)

Monday, February 9, 2009

Division One

A123440 – B.S., v. The Superior Court of Humboldt County Health and Human Services et al., R.P.I.

Petitioner's motion to augment the record, filed January 15, 2009, is dismissed as moot. The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. V, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay*

Monday, February 9, 2009(Continued)

Development, Ltd. V. Superior Court (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. Marchiano, P.J., We Concur: Margulies, J., Graham, J.⁸ (Not for Publication.)

Division Two

A121099 – The People, v. Imhotep Malone Narcisse.

The judgment is reversed and the matter remanded with the following directions. A new judge shall hold a hearing on defendant's *Marsden* motion. If the motion is

⁷ Judge of the Superior Court of the City and County of San Francisco, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁸ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

denied, the court shall reinstate the judgment. If the court finds that defendant should have new counsel, the court shall appoint new counsel to assist him and shall entertain such applications as the newly appointed counsel may make. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

A117887 – Alan Schwartz et al., v. Dell Furano.

The judgment in favor of plaintiffs for \$375,000 is affirmed and the matter is remanded for the recalculation of prejudgment interest from June 13, 2003 to April 11, 2007, compounded annually, at the statutory rate of seven percent. The trial court shall issue a new judgment nunc pro tunc to April 11, 2007, reflecting the proper amount of prejudgment interest so calculated. In all other respects, the judgment is affirmed. Each party to bear their own costs on the appeal and cross-appeal. Siggins, J., We Concur: McGuinness, P.J., Jenkins, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Monday, February 09, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Jenkins, J.; and B. Robbins, Deputy Clerk.

A120299 The People,
v.
Robert William Batok.
Cause called and argued by J. Bradley O'Connell, counsel for appellant, and Ronald Niver, counsel for respondent. Cause ordered submitted.

A120323 Mehmet Gundogdu et al.,
v.
King Mai Inc.
Cause called and argued by Merrill G. Emerick, counsel for appellants, and W. Eric Blumhardt, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Jenkins, J. left the bench and Siggins, J. joined the bench.

A119578 The People,
v.
Robert Jeffrey Jones.
Cause called and argued by Brian K. Hong, counsel for appellant, and Sharon R. Wooden, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Pollak, J. left the bench and Jenkins, J. re-joined the bench.

A117920 The People,
v.
Jideofor Ajaelo.
Cause called and argued by Anne C. Beles, counsel for appellant, and Aileen Bunney, counsel for respondent. Cause ordered submitted.

A115518 Jeanne Millecam,

V.

Chevrontexaco Corporation.

Cause called and argued by Clint J. Brayton, counsel for appellant, and Kevin M. Fong, counsel for respondent. Cause ordered submitted.

Court Adjourned.

Monday, February 9, 2009(Continued)

Division Four

A120300 – The People, v. Kenneth Raymond Warren.

The convictions on counts three and four are vacated. In all other respects, the judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

A120974 – In re J.L., JR., et al., Persons Coming Under the Juvenile Court Law. San Francisco Department of Human Services, v. J.L., SR., et al.

The juvenile court's jurisdictional order is affirmed. The dispositional order is reversed and remanded for further proceedings consistent with this decision. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

A120531 – Certified Coatings of California, Inc., v. Shimmick Construction Company, Inc./Obay Ashi Corporation et al.

The order denying the motion to compel arbitration is affirmed. Appellants shall pay respondent's costs. Stevens, J.⁹ We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, February 10, 2009

Division One

A122103 – The People, v. Robert S. Hughes.

Accordingly, the judgment is affirmed. Graham, J.¹⁰ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

⁹ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section of the California Constitution.

¹⁰ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Tuesday, February 10, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Fred Abad, Deputy Clerk, and CHP Officer Martin Fredericks, Bailiff.

- A118018 People,
v.
Randy Brandon Lockett.
Cause called and argued by Gary Garfinkle, counsel for appellant via teleconferencing, and John Vance, counsel for respondent. Cause ordered submitted.
- A121356 Estate of Seath Lamar Simmons, Deceased.
Jitkorn Meechai,
v.
Ruby Slaughter.
Cause called and argued by Susan Bailevav, counsel for appellant, and Kevin Corbett, counsel for respondent. Cause ordered submitted.
- A123290 Virginia Surety Company, Inc., etc.,
v.
Superior Court of Alameda County;
Liberty Mutual Fire Insurance Company.
Cause called and argued by Joshua Goodman, counsel for petitioner, and Heather Wilkins, counsel for real party. Cause ordered submitted.

Court adjourned until Wednesday, February 11, 2009 @ 9:00 a.m.

Tuesday, February 10, 2009(Continued)

Division Two

A120462 – Diane Benson, v. Workers’ Compensation Appeals Board and The Permanente Medical Group.

The Board’s opinion and decision after reconsideration is affirmed. The parties shall bear their own costs. Haerle, J., We Concur: Kline, P.J., Richman, J. (Certified for Publication.)

Division Four

A115802 – The People, v. Mark Stephen Woolums.

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120780 – In re S.O., a Person Coming Under the Juvenile Court Law. The People, v. S.O.

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120048 – Terry Quarry et al., v. Doe 1.

The judgment is reversed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Certified for Publication.)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, February 11, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution., Raquel Arellano, Deputy Clerk, and CHP Officer Ricky Franklin, Bailiff.

A121900 People,
v.
Ronald Houff.
Cause called and argued by Laura Zunino, counsel for appellant, and Alex Coolman, counsel for respondent. Cause ordered submitted.

A121333 People,
v.
Antonio Deshawn Owens.
Cause called and argued by David Martin, counsel for appellant, and Ronald Niver, counsel for respondent. Cause ordered submitted.

A113636 People,
v.
Rafael Diaz Casique.
Cause called and argued by Eric Multhaup, counsel for appellant, and Bruce Ortega, counsel for respondent. Cause ordered submitted.

A121386 Dotty Coplen, et al.,
v.
County of Mendocino, et al.
Cause called and argued by Mona Tawatao, counsel for appellants, and Terry Gross, counsel for respondents. Cause ordered submitted.

Court adjourned.

Wednesday, February 11, 2009(Continued)

Division One

A123290 – Virginia Surety Company, Inc., etc., v. The Superior Court of Alameda County, Liberty Mutual Fire Insurance Company et al., R.P.I.

Petitioner shall recover its costs. Margulies, J., We Concur: Marchiano, P.J., Graham, J.¹¹ (Not for Publication.)

A120072 – National Union fire Insurance Company of Pittsburgh, PA., v. Cambridge Integrated Services Group, Inc.

The judgment of the trial court is reversed and remanded for further proceedings consistent with this decision. National shall recover its costs on appeal. Margulies, J., We Concur: Marchiano, P.J., Flinn, J.¹² (Certified for Publication.)

A117211 – In re the Marriage of Rachel and James B. Kiesel. Rachel Holton, v. James B. Kiesel, Napa County Department of Child Support Services.

The order is affirmed. Margulies, J., We Concur: Marchiano, P.J., Flinn, J.¹³ (Not for Publication.)

Division Two

A122667 – Iqbal Randhawa, v. The Superior Court of Solano County, The People, R.P.I.

The petition for writ of prohibition is granted. Let a writ of prohibition issue restraining respondent superior Court from taking any further action against petition in Sonoma County Superior Court case No. FCR 239864, except to grant petitioner's motion to dismiss pursuant to section 1381 and to dismiss the information. Upon finality of this decision, the stay previously issued will be dissolved. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

A119908 – The People, v. Heliodoro Romero-Arellano et al.

¹¹ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

¹² Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

¹³ Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgments of conviction are affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Certified for Partial Publication.)

Division Three

Wednesday, February 11, 2009(Continued)

A120323 – Mehmet Gundogdu et al., v. King Mai, Inc.

The judgment is affirmed. King Mai shall recover its costs on appeal. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A123398 – In re K.D., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. J.D.

The motion to dismiss the appeal is granted. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A119578 – The People, v. Robert Jeffrey Jones.

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

Division Five

A121010 – Nahum Zilberberg, v. Stephen Wen.

The summary judgment is affirmed. Costs to respondent. Simons, Acting P.J., We Concur: Needham, J., Stevens, J.¹⁴ (Not for Publication.)

A119750 – The People, v. Brian James Corsaut.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Friday, February 13, 2009

Division Four

¹⁴ Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A122687 – The People, v. Lino Rubalcava Jimenez.

The judgment is affirmed. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Tuesday, February 17, 2009

Division One

Tuesday, February 17, 2009(Continued)

A120084 – Leo Bryant et al., v. Sara Lee Corporation et al.

The judgment is affirmed. Flinn, J.¹⁵ We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A119953 – San Francisco Bay area Rapid Transit District, v. Fair Employment and Housing Commission.

By The Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

A121407 – The People, v Paul Zapisek.

The judgment extending appellant's commitment through September 10, 2009, is affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A121277 – The People, v. Craig Antonio Wright.

Accordingly, we find no arguable issues on appeal and the judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

A115518 – Jeanne Millecam, v. Chevrontexaco Corporation et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. McGuinness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

¹⁵ Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, February 17, 2009

The court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Bobby Singh, Bailiff.

A121342 People
 v.
 Kristopher Daniel Coulombe
Cause called. Steve Condie argued for appellant Coulombe. Allan Yannow argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Sepulveda, J.

A118241 Alai Kimberly Toure
 v.
 Hodari Toure
Cause called. In pro per appellant Alai Kimberly Toure argued. Hodari Toure appeared, but was not permitted to argue because he did not file a brief. Cause submitted.

A116731 Theodore Tarver, Jr.
 v.
 City and County of San Francisco
Cause called. Lawrence D. Murray argued for appellant Tarver. Lisa Berkowitz argued for respondent. Cause submitted.

A122592 Lois Farrell
 v.
 Donald R. Farrell
Cause called. R. A. Canatella argued for appellant Donald Farrell. Michele McGill argued for respondent. Edward Ottonello also appeared for respondent, but did not argue. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A120603

Tim Kelly

v.

Elizabeth Barela et al.

Cause called. Scott McKay argued for appellant Kelly. Paul R. Lynd argued for respondent Elizabeth Barela. Cause submitted.

Court adjourned at 10:53 a.m.

Tuesday, February 17, 2009(Continued)

Division Five

A118601 – The People, v. Dwan Anwar Phillips.

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Steven, J.¹⁶
(Not for Publication.)

Wednesday, February 18, 2009

Division One

A120808 – The People, v. Deceychia Collier.

Accordingly, the judgment is affirmed. Graham, J.¹⁷ We Concur: Marchiano, P.J.,
Margulies, J. (Not for Publication.)

A121078 – Gwen Row-Lee Sykes, v. Brenda Sykes.

The order granting the section 473, subdivision (b) motion is affirmed. Marchiano,
P.J., We Concur: Margulies, J., Flinn, J.¹⁸ (Not for Publication.)

Division Two

A114037 – The People, v. Janine Simone Chandler.

The judgment of conviction is affirmed. Richman, J., We Concur: Haerle, Acting
P.J., Lambden, J. (Not for Publication.)

¹⁶ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

¹⁷ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

¹⁸ Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, February 18, 2009

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Franklin, Officer Bartlett and I. Santos, Deputy Clerk.

- A116949 James M. Herbst,
v.
Barbara T. Land.
Cause called and argued by John Schreiber, counsel for appellant, and Mary Nolan, counsel for respondent. Cause ordered submitted.
- A120230 Lili Silvera et al.,
v.
Lawrence Wong.
Cause called and argued by Jennifer Moss, counsel for appellant, and Charles Wolff, counsel for respondent. Cause ordered submitted.
- A118908 Hypertouch Inc.,
v.
Perry Johnson, Inc.;
Kogok Corporation.
Cause called and argued by Stephen Ring, counsel for appellant, John Fallat, counsel for respondent Hypertouch, Inc., Joseph Miller, counsel for respondent Perry Johnson, Inc. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, February 18, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Bartlett and I. Santos, Deputy Clerk.

- A120628 The People,
 v.
 William Russell Dawson.
Cause called and argued by William Mount, Deputy District Attorney, counsel for appellant, and Eric Multhaup, counsel for respondent. Cause ordered submitted.
- A121627 Terry Bakkie,
 v.
 Union Carbide Corporation.
Cause called and argued by James Stengel, counsel for appellant, and Gary Brayton, counsel for respondent. Cause ordered submitted.
- A121754 David J. Gutierrez,
 v.
 Nor-Cal Ready Mix.
Cause called and argued by Douglas Prutton, counsel for appellant, and Sarah Mott, counsel for respondent. Cause ordered submitted.
- A121306 Estate of Ida Mae Terry, Deceased.
 Mavina Chess,
 v.
 Robbie Stovall;
 Traci Stoval et al.
Cause called and argued by Kimberly Fanady, counsel for appellant, and Hugo Torbet, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, February 19, 2009 at 9:30 a.m.

Wednesday, February 18, 2009(Continued)

Division Four

A118961 – The People, v. Onesimo Olmedo Garcia.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A122867 – Eric Armitage, v. Ted Degolia.

The judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A121428 – The People, v. Tyrone Jamar Griffieth.

The judgment – including the termination of Griffieth's Proposition 36 probation – is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120542 – The People, v. Raymond Todd Marsh.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

A123439 – D.B., v. The Superior Court of Humboldt County, Humboldt County Department of Health & Human Services et al., R.P.I.

The petition is granted solely for the purpose of ensuring compliance with the ICWA; in all other respects, the petition is denied on the merits. Let a peremptory writ of mandate issue directing the juvenile court to (1) vacate its order setting the case for a hearing under section 366.26, and (2) order DHHS to provide ICWA notices containing the updated information about father's family to the BIA, Secretary and any appropriate Indian Tribes. If, following such notice, the BIA or any tribe determines that A.H. is an Indian child as defined by the ICWA, or if other information is presented showing A.H. is an Indian child as defined by the ICWA, the juvenile court shall hold a new dispositional hearing and shall conduct it and all further proceedings in conformance with the ICWA. If A.H. is not determined to be an Indian child, or is no response is received indicating he is an Indian child, the juvenile court shall reset the hearing under section 366.26. (See *Justin L. v. Superior Court* (2008) 165 Cal.App.4th 1406, 1410.) The order denying

father reunification services pursuant to section 361.5, subdivision (b)(13) is affirmed and the petition is denied as to that order. The request for a stay of the March 2, 2009 section 366.26 hearing is denied as unnecessary in light of our disposition. This decision is final as to this court immediately. (Rule 8.26(b)(3).) The order to show cause, having served its purpose, is hereby discharged. Needham, J., We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

Thursday, February 19, 2009(Continued)

Division One

A122707 – Race C. Jones, v. Inter-Con Security Systems, Inc. et al.

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.¹⁹ (Not for Publication.)

Division Two

A121346 – Deborah Norton et al., v. Glenn Howell et al.

The trial court's order denying appellants' petition is affirmed. Haerle, J., I Concur: Richman, J. (See concurring opinion by Kline, P.J.) (Not for Publication.)

¹⁹ Retired judge of the Marin Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Thursday, February 19, 2009

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Singh and I. Santos, Deputy Clerk.

At this point of the proceedings, Presiding Justice Kline announces that the panel for the first three cases will consist of himself, Justice Haerle, and Justice Richman. He also announces that the panel for the last two cases will be himself, Justice Lambden, and Justice Richman.

A120680/ In re D.L., a Person Coming Under the Juvenile Court Law.
A121375 The People,
v.
D.L.
Cause called and argued by Jeffrey Glick, counsel for appellant, and Christopher Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A120514 In re A.T., a Person Coming Under the Juvenile Court Law.
The People,
v.
A.T.
Cause called and argued by Gene Vorobyov, counsel for appellant, and Christopher Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A120987 Yvette Munoz, a Minor, etc. et al.,
v.
City of Union City et al.
Cause called and argued by George Murphy, counsel for appellant, and Daniel Smith, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Haerle left the bench and Justice Lambden joined the bench for the remainder of the calendar.

A119035/ Harvey Grodensky,
A119036 v.

Artichoke Joe's Casino et al.

Cause called and argued by Maureen McClain, counsel for appellant/respondent, and Dennis Moss, counsel for respondent/appellant. Cause ordered submitted.

A121002

Audrey Manuel,

v.

Pacific Gas & Electric.

Cause called and argued by Jacob Shapiro, counsel for appellant, and Frederick Baker, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

Thursday, February 19, 2009(Continued)

Division Three

A121376 – In re R.V., a Person Coming Under the Juvenile Court Law. The People, v. R.V.

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Certified for Publication.)

Division Four

A119307 – The People, v. Rodolfo Frederico De Souza.

A121844 – In re Rodolfo Frederico De Souza.

The judgment is affirmed. Appellant's petition for a writ of habeas corpus is denied. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

A117561 – In re Leonard Rubio, on Habeas Corpus.

The order to show cause is discharged. The petition for writ of habeas corpus is granted. The Board is directed to vacate its denial of parole and to conduct a new hearing that is consistent with the views expressed in this opinion. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

A120020 – The People, v. Ryan Anthony Taylor.

The trial court's judgment is affirmed. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A122122 – The People, v. Daniel A. York.

We find no arguable issues on appeal and affirm the judgment. Dondero, J.²⁰ We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A115620 – Stancy Nesby, v. City and County of San Francisco, et al.

²⁰ Judge of the Superior Court of San Francisco City and County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

For these reasons, we affirm the judgment, as well as the orders sustaining the demurrer without leave to amend and denying leave to file a third amended complaint, with costs to the City. Dondero, J.²¹ We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

Friday, February 20, 2009

Division Two

A120622 – The People, v. Maurice Anthony Green.

The judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A116949 – James M. Herbst, v. Barbara T. Land.

The judgment is affirmed. Respondent Herbst's motion for sanctions is denied because Land's appeal is not frivolous. Respondent Herbst is awarded costs on appeal. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A120828 – Dominique S. Black, v. William M. Luckens et al.

The judgment is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

A120323 – Mehmet Gundogdu et al., v. King Mai, Inc.

By The Court: The opinion in the above-entitled matter filed on February 11, 2009, was not certified for publication in the official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered. McGuiness, P.J. (Certified for Publication.)

Division Four

A120099 – The People, v. Mark Angus Harper.

We vacate the judgment in both cases and direct the trial court on remand to reinstate the informations. Further, we direct the court and the parties to proceed in a

²¹ Judge of the Superior Court of San Francisco City and County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

manner consistent with this opinion. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

A120178 – The People, v. Kenneth Hue Clark.

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A119005 – Executive Risk Indemnity, Inc., v. Reese M. Jones.

The judgment is reversed and remanded for further proceedings to determine whether ERII was required to indemnify STARS for the loss resulting from the faulty investment advice STARS gave Jones while the policy was in effect. In these proceedings, ERII is precluded from relitigating STARS's liability to Jones or

Friday, February 20, 2009(Continued)

the extent of Jones's damages because these issues were conclusively established by the award and judgment. However, the parties remain free to litigate all of the other coverage questions that must be determined in establishing the parties' obligations and duties under the insurance policy issued by ERII to STARS. Costs are awarded to Jones. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Certified for Publication.)

Division Five

A118627 – In re James Kees, on Habeas Corpus.

The order of the superior court granting Kees's petition for writ of habeas corpus is affirmed. The Governor's decision reversing the Board's grant of parole is vacated and the Board's decision is reinstated. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Monday, February 23, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuinness, P.J., Siggins, J., and Jenkins, J.; and F. Castuera, Deputy Clerk.

- A120650 In re the Marriage of Laura Fragoso and Sergio Fragoso.
 Laura Fragoso,
 v.
 Sergio Fragoso.
 Cause called and argued by Janet Gawthrop, counsel for appellant, and Ted Amado,
 counsel for respondent. Cause ordered submitted.
- A120324 Global Reach Investment Corporation,
 v.
 Burlingame Investment Corporation.
 Cause called and argued by Fred Blum, counsel for appellant, and Amy Margolin,
 counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Monday, February 23, 2009(Continued)

Division One

A112701, A115566, A116796, A118009, and A118262 – In re the Marriage of Joshua Sakov and Ester Adut. Joshua Sakov, v. Ester Adut.

By The Court: It is ordered that the opinion filed herein on January 22, 2009, be modified in the following particulars: (See Order). There is no change in the judgment. The petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

Division Five

A119961 – The People, v. Eric Sean Kepford.

The trial court is ordered to prepare and to forward to the Department of Corrections an amended abstract of judgment showing that appellant was sentenced to a five-year enhancement for violating section 12022.55. In addition, the abstract should state that appellant is entitled to 125 days of actual credit plus 18 days of conduct credit for a total of 143 days. In all other respects, the judgment is affirmed. Jones, P.J., We Concur: Simons, J., Stevens, J.²² (Not for Publication.)

Tuesday, February 24, 2009

Division One

A120089 – The People, v. Jose Alfredo Mendoza.

The judgment and sentence are affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.²³ (Not for Publication.)

A121042 – Nathaniel G., v. K.D.

By The Court: It is ordered that the opinion filed herein on January 28, 2009, be modified as follows: (See Order). There is no change in the judgment. The petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

²² Retired Associate Justice of the Court of Appeal, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

²³ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Two

Tuesday, February 24, 2009(Continued)

A118908 – Hypertouch, Inc., v. Perry Johnson, Inc., Kogok Corporation.

The judgment is affirmed. Respondents are awarded costs on appeal. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A121306 – Estate of IDA M. Terry, Deceased. Mavina Chess, v. Traci Stovall et al.

The judgment is reversed. Chess is to pay the costs of appeal. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

A117077 – The People, v. Walter Victor Taylor.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

A121689 – The People, v. Donald Leroy Dean.

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

A117920 – The People, v. Jideofor Ajalo.

The judgment is affirmed.²⁴ Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

²⁴ At oral argument on February 9, 2009, appellant's counsel also contended that the jury was erroneously instructed on the offense of premeditated attempted murder under the natural and probable consequences doctrine (doctrine). We gave leave for the parties to file supplemental letter briefs on this issue by close of business on February 11, 2009. Our further review of the record, however, shows defense counsel joined in the giving of CALJIC 3.02 [Principals – Liability for Natural and Probate Consequences]. The issue is therefore waived for purposes of appeal. (*People v. Bolin* (1998) 18 Cal. 4th 297, 326 [waiver found when defense counsel agreed to giving of instruction and raised no objection]; (*People v. Jackson* (1996) 13 Cal.4th 1164, 1223, 920 P.2d 1254, 1287 [claims of error waived with regard to consciousness –of guilt instructions where defendant joined in requesting them].) Even if the issue had not been waived, we would have rejected appellant's contention. Whereas in his supplemental letter brief appellant relies on *People v. Lee* (2003) 31 Cal.4th 613, 627 (*Lee*) [holding that section 664, subdivision (a) does not require "that an attempted murderer personally acted with willfulness, deliberation, and premeditation. But the Legislature has declined to do so." (Id. At pp. 624-625; see also *People v. Cummins* (2005) 127 Cal.App.4th 667, 680 [appellate court saw "no reason . . . to depart from the reasoning of the *Lee* court in a situation that applies the natural and probable consequences doctrine" to premeditated attempted murder].)

A118801 – The People, v. Lee John Greer.

The trial court is directed to correct the abstract of judgment to reflect the imposition and staying of sentence enhancements pursuant to subdivisions (b) and (c) of Penal Code section 12022.53, and to forward a corrected abstract of judgment to the California Department of Corrections. The judgment is otherwise

Tuesday, February 24, 2009(Continued)

affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

A121549 – The People, v. Matthew C. Davis.

The judgment is affirmed. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

A121173 – In re M.M., a Person Coming Under the Juvenile Court Law. The People, v. M.M.

The orders of the juvenile court are affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Division Four

A121971 – The People, v. Thomas Allen Darby.

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120603 – Tim Kelly, v. Elizabeth Barela.

The December 14, 2007 order granting respondent relief from the trial court's prior order and the February 8, 2008 order granting respondent's claim of exemption in part are affirmed. Respondent shall recover her costs on appeal Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A122078 – In re J.I., a Person Coming Under the Juvenile Court Law. The People, v. J.I.

The matter is remanded to the juvenile court for determination of whether the violation of Penal Code section 496, subdivision (a), admitted by the minor, is a misdemeanor or felony. In all other respects, the judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A121424 – In re K.B., a Person Coming Under the Juvenile Court Law. The People, v. K.B.

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

Wednesday, February 25, 2009

Division One

A121515 – Edward Zucker et al., v. Webcor Construction, Inc.

The order is affirmed. Webcor is awarded its costs on appeal. Marchiano, P.J., We Concur: Margulies, J., Graham, J.²⁵ (Not for Publication.)

A120517 – The People, v. Porfirio Albert Medina.

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Flinn, J.²⁶ (Certified for Partial Publication.)

A122396 – In re S.H., a Person Coming Under the Juvenile Court Law. The People, v. S.H.

The judgment and orders appealed from are affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.²⁷ (Not for Publication.)

A118018 – The People, v. Randy Brandon Lockett.

The superior court is directed to file an amended abstract of judgment designating defendant's offense as assault with force likely to produce great bodily injury. In all other respects, the judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.²⁸ (Not for Publication.)

Division Two

A122732 – Robert Lee Woodward, v. City of Menlo Park.

The orders appealed from are affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

²⁵ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

²⁶ Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

²⁷ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

²⁸ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A121999 – In re O.V., a Person Coming Under the Juvenile Court Law. The People, v. O.V.

The orders appealed from are affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Wednesday, February 25, 2009(Continued)

Division Three

A119965 – The People, v. Duane Allen Agamau.

The judgment is affirmed. Jenkins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

A120784 – In re D.T., a Person Coming Under the Juvenile Court Law. The People, v. D.T.

The order awarding restitution is affirmed. Pollak, J., We Concur: McGuinness, P.J., Jenkins, J. (Not for Publication.)

A120650 – In re the Marriage of Laura and Sergio Fragoso. Laura Fragoso, v. Sergio Fragoso.

The trial court's Decision after Hearing is affirmed. Jenkins, J., We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

Division Four

A120231 – The People, v. Keith Richard Newell.

The judgment is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A121837 – In re A.J., JR., et al., Persons Coming Under the Juvenile Court Law. San Francisco Department of Human Services, v. A.J., SR.

The orders are affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

A121904 – The People, v. Armando Martinez.

The judgment is affirmed. Dondero, J.²⁹ We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

**A116816 and A117648 – Reginald R. Taylor, v. Elliott Turbomachinery Co.
Inc.**

Wednesday, February 25, 2009(Continued)

The judgments are affirmed. Respondents shall recover their costs on appeal.
(Cal. Rules of Court, rule 8.278(a)(1),(2).) Dondero, J.³⁰ We Concur: Simons, Acting
P.J., Needham, J. (Certified for Publication.)

**A121950 – In re J.F., a Person Coming Under the Juvenile Court Law. The
People, v. J.F.**

The order awarding restitution is affirmed. Jones, P.J., We Concur: Simons, J.,
Needham, J. (Not for Publication.)

A118532 – The People, v. Howard Eugene Raff.

The judgment is affirmed. Stevens, J.³¹ We Concur: Jones, P.J., Needham, J.
(Not for Publication.)

Thursday, February 26, 2009

Division One

**A120252 – In re D.M., A Person Coming Under the Juvenile Court Law. The
People, v. D.M.**

The wardship order is affirmed. The order committing defendant to the DJJ is
affirmed. The order sustaining the enhancement allegations and calculating the
maximum period of physical confinement is reversed. Upon remittitur issuance, the
juvenile court is to reconsider the enhancement allegations and recalculate defendant's
maximum period of physical confinement in a manner consistent with the views set forth

²⁹ Judge of the Superior Court of San Francisco City and County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³⁰ Judge of the Superior Court of San Francisco City and County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³¹ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

in the body of this opinion. The jurisdictional and dispositional minutes orders are affirmed in all other respects. The court shall complete an amended commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice form (JV-732) and is then to forward a copy of the amended commitment to the DJJ. Graham, J.³² We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A119904 – Shari Taylor, v. San Francisco Unified School District et al.

By The Court: It is ordered that the opinion filed here on January 29, 2009, be modified as follows: (See Order). There is no change in the judgment. The petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

Thursday, February 26, 2009(Continued)

A122835 – In re N.J., a Person Coming Under the Juvenile Court Law. The People, v. N.J.

The jurisdictional and dispositional findings and orders are affirmed. Marchiano, P.J., Margulies, J., Graham, J.³³ (Not for Publication.)

Division Two

A122940 – The People, v. Ian James O'Connor.

The judgment and sentence are both affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

A123604 – In re I.G., a Minor. Alicia G., v. The Superior Court of The State of California, in and for The County of San Mateo, San Mateo County Human Services Agency, R.P.I.

The petition for extraordinary writ is denied on the merits, and the case is remanded for further proceedings. The decision is final in this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A121427 – The People, v. Luis Guillermo Gonzalez-Ramirez.

³² Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³³ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J.
(Not for Publication.)

A123404 – H.H., v. San Mateo County Superior Court, San Mateo County Human Services Agency, R.P.I.

The petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (1)(1); rule 8.452(i)(1); see *Kowis v. Howard* (1992) 3 Cal.4th 888, 893-895 [written opinion on petition for extraordinary relief precluded reconsideration of or further challenge to orders in any subsequent appeal].) Our opinion is final as to this court forthwith. (Rule 8.49(b)(3).) We hereby lift the stay on the proceedings and order the juvenile court to proceed with the section 336.26 hearing. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

Thursday, February 26, 2009(Continued)

A114855 – Rental Housing Association of Northern Alameda County et al., v. City of Oakland, Jacqueline Howell et al.

A114919 – Kun Sam Kim et al., v. City of Oakland, Jacqueline Howell et al.

The cause is remanded for further proceedings consistent with our determination that section 6.A(9)(a) of Measure EE is preempted by Evidence Code section 500. The judgment is otherwise affirmed. Each party shall bear its own costs on appeal. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Certified for Publication.)

A120299 – The People, v. Robert William Batok.

The judgment is affirmed. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J.
(Not for Publication.)

Division Four

A115625 – Nahum Guzik, v. Wing K. King.

The judgment is affirmed. Defendant is entitled to his costs on appeal. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

A122856 – In re J.K., a Person Coming Under the Juvenile Court Law. The People, v. J.K.

The appeal is dismissed as moot. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A123439 – D.B., v. The Superior Court of Humboldt County, Humboldt Department of Health & Human Services et al., R.P.I.

By The Court: In the fourth paragraph of the Disposition on page 12 of the opinion filed February 18, 2009, the citation to the California Rules of Court, rule 8.264(b)(3) is deleted and rule 8.490(b)(3) is cited in its place. Jones, P.J. (Certified for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Thursday, February 26, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Needham, Jr., J., Dondero, J.,* Stevens, J.,** and Joshua Chow, Deputy Clerk.

A120331 The People,
 v.
 Anthony Craig Smith,
Cause called and argued by Diana M. Teran, counsel for appellant, and by Bruce Ortega, counsel for respondent. Submission deferred.

At this point in the proceedings Justice Dondero left the bench and Justice Needham entered.

A118565 OZ Optics Limited et al.,
 v.
 Zeynep Hakimoglu,
Cause called and argued by Laura Maechtlen, counsel for appellant, and by James Jacobs, counsel for respondent and cross-appellant. Submission deferred.

A120678 Maxlyn Cadlo,
 v.
 Asbestos Defendants et al.,
Cause called and argued by Lloyd F. LeRoy, counsel for appellant, and by Philip Ward, counsel for respondent John Crane Inc., and by Sara Marie Parker, counsel for respondent Metacclad insulation. Submission deferred.

A121382 The People,
 v.
 A.C.,
Cause called and argued by Janelle Elaine Caywood, counsel for appellant, and by Martin Kaye, counsel for respondent. Submission deferred.

At this point in the proceedings Justice Needham left the bench and Justice Stevens entered.

A120492 General Mills,
v.
Franchise Tax Board,
Cause called and argued by Andres Vallejo, counsel for appellants, and by Joyce E-Hong
Hee, counsel for respondent. Submission deferred.

Friday, February 27, 2009

Division One

A121900 – The People, v. Ronald Houff.

The order granting the Penal Code section 995 motion is reversed. Marchiano, P.J.,
We Concur: Margulies, J., Graham, J.³⁴ (Not for Publication.)

A122781 – The People, v. Heikooti Mounga.

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.³⁵
(Not for Publication.)

Division Two

**A120514 – In re A.T., a Person Coming Under the Juvenile Court Law. The
People, v. A.T.**

The dispositional order is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J.
(Not for Publication.)

**A120680, A121375 – In re D.L., a Person Coming Under the Juvenile Court
Law. The People, v. D.L.**

The dispositional order is affirmed. The purported appeal from the restitution order
is dismissed. Richman, J., We Concur: Kline, R.J., Haerle, J. (Not for Publication.)

A121627 – Terry Bakkie, v. Union Carbide Corporation.

The purported appeal from the order denying Union Carbide's motion to amend the
judgment is dismissed. The judgment is modified to provide that the "Net Economic
Damages" Bakkie shall recover is \$2,130,652.06. As so modified, the judgment is
affirmed. Union Carbide shall recover its costs on appeal. Lambden, J., We Concur:
Haerle, Acting P.J., Richman, J. (Not for Publication.)

³⁴ Retired judge of the Marin Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the
California Constitution.

³⁵ Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6
of the California Constitution.

A119004 – The People, v. Marilyn Hudnall-Johnson.

The judgment is affirmed. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

Friday, February 27, 2009(Continued)

A120324 – Global Reach Investment Corporation, v. Burlingame Investment Corporation.

The trial court's award of attorney fees and costs is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A121765 – The People, v. Robert J. Barron, III.

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A120266 – In re J.J., a Person Coming Under the Juvenile Court Law. The People, v. J.J.

A122318 – In re J.J., On Habeas Corpus.

By The Court: It is ordered that the opinion filed herein on January 29, 2009, be modified as follows: (See Order). The petition for rehearing is denied. There is no change in the judgment. McGuiness, P.J. (Not for Publication.)

A119619 – The People, v. Thomas Joseph Conforti.

The judgment is affirmed. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

A115905 – The People, v. William Emmitt Goode.

The judgment is modified to reflect that appellant shall serve an indeterminate sentence of 17 years to life, composed of 15 years to life for second degree murder (Pen. Code, § 187, 190, subd. (a)), with a consecutive one-year term for use of a deadly weapon in the commission of the offense (Pen. Code, § 12022, subd. (b)(1)) and a consecutive one-year term of having served a prior prison term (Pen. Code, § 667.5, subd. (b)0. The judgment shall reflect that appellant's determinate, eight-year upper term sentence for arson (Pen. Code, § 451, subd. (b) is to be served concurrently with the indeterminate sentence. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver it to the Department of

Corrections and Rehabilitation. Except as so modified, the judgment is affirmed.
McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

A121418 – The People, v. Joseph Cullen.

The judgment is affirmed. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J.
(Not for Publication.)

A121970 – The People, v. Sergio Zarate.

Friday, February 27, 2009(Continued)

The order revoking appellant's probation and sentencing him to 13 years and four months instate prison is affirmed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J.
(Not for Publication.)

A120402 – Sandra Shewry, as Director, etc., v. Mary Wooten, as Personal Representative, etc.

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J.
(Not for Publication.)

Division Four

A118910, A119761 – Robert Ramirez et al., v. City of Petaluma et al.

The judgment is reversed and the matter is remanded to the trial court with instructions to enter a judgment denying the petition for writ of mandate regarding Owners' request for an unconditional certificate of compliance. The judgment is affirmed with respect to the declaratory relief granted in favor of Owners. The parties shall bear their own costs on appeal. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A121850 – The People, v. William Davis.

The judgment is affirmed. Needham, J., We Concur: Simons, Acting P.J., Stevens, J.³⁶ (Not for Publication.)

A118693 – Warren C. Havens, v. Marvin T. Brown.

The judgment is affirmed. Defendant shall recover his costs on appeal. Stevens, J.³⁷ We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A118320 – The People, v. Steven J. Krukow.

The judgment is affirmed.³⁸ Stevens, J.³⁹ We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

³⁶ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

³⁷ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

³⁸ In a separate petition for writ of habeas corpus, case No. A122945, appellant has claimed that the prosecutor presented false evidence to the jury and that his trial counsel provided ineffective assistance. We have denied that petition by separate order filed this date.

³⁹ Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.